

BILL ANALYSIS

C.S.H.B. 2458
By: Price
Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that, at various times in certain counties, the persons authorized to issue a search warrant to collect a blood specimen from an individual arrested for an intoxication offense are not timely available. C.S.H.B. 2458 seeks to address this issue by revising the persons authorized to issue such a search warrant.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2458 amends the Code of Criminal Procedure to extend the authority to issue a search warrant to collect a blood specimen from a person who is arrested for one of certain specified intoxication offenses and who refuses to submit to a breath or blood alcohol test to a justice of the peace who is not an attorney licensed by the state, serves in a county with a population of 30,000 or less, and is authorized to issue those warrants by the commissioners court of that county.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2458 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Article 18.01(j), Code of Criminal Procedure, is amended to read as follows:

(j) Any magistrate [~~who is an attorney licensed by this state~~] may issue a search

HOUSE COMMITTEE SUBSTITUTE

No equivalent provision.

warrant under Article 18.02(10) to collect a blood specimen from a person who:
(1) is arrested for an offense under Section 49.04, 49.045, 49.05, 49.06, 49.065, 49.07, or 49.08, Penal Code; and
(2) refuses to submit to a breath or blood alcohol test.

No equivalent provision.

SECTION 1. Article 18.01, Code of Criminal Procedure, is amended by amending Subsection (c) and adding Subsection (k) to read as follows:

(c) A search warrant may not be issued under Article 18.02(10) unless the sworn affidavit required by Subsection (b) sets forth sufficient facts to establish probable cause: (1) that a specific offense has been committed, (2) that the specifically described property or items that are to be searched for or seized constitute evidence of that offense or evidence that a particular person committed that offense, and (3) that the property or items constituting evidence to be searched for or seized are located at or on the particular person, place, or thing to be searched. Except as provided by Subsections (d), (i), ~~and~~ (j), and (k), only a judge of a municipal court of record or a county court who is an attorney licensed by the State of Texas, a statutory county court judge, a district court judge, a judge of the Court of Criminal Appeals, including the presiding judge, a justice of the Supreme Court of Texas, including the chief justice, or a magistrate with jurisdiction over criminal cases serving a district court may issue warrants under Article 18.02(10).

(k) In addition to the magistrates authorized by Subsection (j) to issue search warrants to collect blood specimens from persons described by Subsection (j), a justice of the peace who is not an attorney licensed by this state may issue search warrants to collect those blood specimens if the justice of the peace serves in a county with a population of 30,000 or less and is authorized to issue those warrants by the commissioners court of that county.

SECTION 2. This Act takes effect September 1, 2017.

SECTION 2. Same as introduced version.